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16 d/b/a Hustler Club-San Francisco

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION  
20

21 PETER E. KRESSY,  
22  
23 Plaintiff,

24 v.

25 LARRY FLYNT'S HUSTLER CLUB  
26 SAN FRANCISCO, BS MANAGEMENT,  
27 SAW ENTERTAINMENT LTD. –  
28 HUSTLER

Defendants

Case No.: C-07-4892-EDL

**DEFENDANTS' REPLY IN SUPPORT OF  
MOTION TO COMPEL ARBITRATION AND  
STAY COURT PROCEEDINGS**

**Date:** December 18, 2007  
**Time:** 9:00 a.m.  
**Courtroom:** E, 15<sup>th</sup> Floor  
**Judge:** Hon. Elizabeth D. Laporte  
(Magistrate Judge)

**Trial:** None Set  
**Action Filed:** September 20, 2007

29 **I. INTRODUCTION**

30 As set forth in the moving papers of Defendants SAW Entertainment, Ltd. d/b/a  
31 Hustler Club San Francisco ("Hustler") and Defendant BS Management ("BSM"), Plaintiff *in pro*

1 *per* Peter E. Kressy (“Plaintiff”) signed a binding agreement to arbitrate “all claims or  
 2 controversies arising out of Employee’s employment or termination,” including claims arising out  
 3 of “wage and hour law.” Plaintiff’s instant complaint seeks allegedly unpaid wages and overtime  
 4 wages under the Fair Labor Standards Act. Accordingly, Plaintiff’s claims are subject to the  
 5 arbitration agreement.

6 Plaintiff has failed to file any opposition to this motion.

7 For the reasons set forth in their moving papers, this Court should issue an order  
 8 compelling arbitration of all Plaintiff’s claims and staying the instant court proceedings.

## 9 **II. FACTS**

10 On November 8, 2007, Defendants Hustler and BSM served Plaintiff by mail and  
 11 via the e-filing process with its notice and motion for an order compelling submission of claims to  
 12 binding arbitration and staying the instant court proceeding. This notice gave Plaintiff 40 days  
 13 notice of the December 18, 2007 hearing. Per Northern District Rule 7-3(a), Plaintiff’s  
 14 opposition to this motion was due on November 27, 2007. To date, however, Plaintiff has filed  
 15 no opposition whatsoever.

## 16 **III. LEGAL ANALYSIS**

17 As set forth in Defendants’ moving papers, Plaintiff brings various wage and hour  
 18 claims under the Fair Labor Standards Act (“FLSA”) against his former employer, Hustler, and  
 19 against BSM, an entity for which he never worked. Defendants submitted as Exhibit A to the  
 20 Declaration of Gregory Ruffin the Arbitration Agreement Plaintiff signed that encompasses all  
 21 the his claims. Defendants also cited the Federal Arbitration Act and applicable authority  
 22 establishing the general applicability of the FAA to employment-based claims. See, e.g., Circuit  
 23 City Stores v. Adams (2001) 532 U.S. 105, 114-119.

24 Likewise, Defendants cited to authority for the proposition that purportedly  
 25 contradictory state laws (such law is California Labor Code § 229) are preempted by the FAA  
 26 and, moreover, that the arbitration agreement nevertheless comports with the dictates of  
 27 California law covering arbitration agreements relating to statutory employment claims. See, e.g.,  
 28

1 Armendariz v. Foundation Health Psychcare (2000) 24 Cal.4th 83.

2 Finally, Defendants established that they are both entitled to enforce the arbitration  
3 agreement, which, by its express terms, applies to Hustler and its "agents and employees." As  
4 noted, Plaintiff generally alleges an agency relationship between the Defendants; as such both  
5 named Defendants are entitled to enforce the contract to arbitrate.

6 Under the Local Rules of the Northern District, the nonmoving party is required to  
7 serve and file either opposition papers or a written statement of nonopposition. See, Rule 7-9.  
8 Where a party fails to file a timely opposition, the Court may grant the motion without a hearing.  
9 See, e.g., Ghazali v. Moran (9<sup>th</sup> Cir. 1995) 46 F.3d 52, 53.

10 Here, Plaintiff's failure to file any opposition should be construed as his consent to  
11 arbitrate all his claims against Defendants consistent with the subject arbitration agreement.

#### 12 **IV. CONCLUSION**

13 As established in Defendants' moving papers, Plaintiff is the subject of a valid,  
14 irrevocable and fully enforceable Agreement to arbitrate his disputes with his former employer,  
15 Hustler and its' alleged agent, BSM. As such, and in light of Plaintiff's failure to file any  
16 opposition to this motion, Hustler and BSM respectfully request that the Court order the claims of  
17 Plaintiff into binding arbitration pursuant to the agreements of the parties and stay this civil  
18 proceeding pending completion of arbitration.

19  
20 Dated: December 4, 2007

LONG & LEVIT LLP

21  
22 By 

23 DOUGLAS J. MELTON  
24 JOHN B. SULLIVAN  
25 Attorneys for SAW Entertainment, LTD  
26 d/b/a Hustler Club-San Francisco

27  
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**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Long & Levit LLP, 465 California Street, Suite 500, San Francisco, California 94104.

On December 4, 2007, I served the document(s) named below on the following attorney(s) of record and/or interested parties in the case of *Kressy v. Larry Flynt's Hustler Club San Francisco, et al.*, United States District Court Northern District of California Case No. C-07-4892-EDI.

<p align="center"><b>DEFENDANTS' REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY COURT PROCEEDINGS</b></p>
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SERVED ON:

<p>Peter E. Kressy 517 Broadway, Number 21 San Francisco, CA 94133</p>	
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☒ (BY MAIL) I am readily familiar with Long & Levit LLP's practice for collection and processing of documents for mailing with the United States Postal Service. I caused such document(s) to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at San Francisco, California, that same day in the ordinary course of business.

☒ (BY ELECTRONIC FILING) I electronically filed the document(s) with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the person(s) or attorney(s) of record at the listed email address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 4, 2007, at San Francisco, California.

  
 Cindy C. Ratcliff

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